

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4576 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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S. M. GUPTA & ORS.

Versus

O.N.G.C & ORS.

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Appearance:

MS KALPANA BRAHMBHATT for Petitioners

MR AJAY MEHTA for Respondent No.1 to 4

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/08/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioners who were employees in central workshop at Baroda in Oil & Natural Gas Commission in different categories during the period between 26.9.76 to 22.11.79 either by transfer or by direct recruitment, have filed this Special Civil Application before this Court and the prayer has been made thereunder that the respondents may

be directed to pay them central workshop allowance and merge the same in the pay scale fixed on the date of their employment between the aforesaid period and further to pay them all consequential benefits.

2. The first respondent, in exercise of powers conferred upon it by Section 32 of the Oil & Natural Gas Commission Act, had framed regulations called Oil & Natural Gas Commission (Recruitment & Promotion) Regulations in 1974 (hereinafter referred to as the Regulations, 1974). The recruitment and other conditions of the categories of the post in the Commission are regulated under the Regulations, 1974. The pay scale in different categories of posts were fixed by the first respondent under the aforesaid Regulations. Later on the pay scale fixed were revised under the agreement entered into between the Union of employees and the respondents. The revised pay scale have been given effect from 1.4.75 and all the employees whether appointed prior to that date or subsequent to that date have been given benefits of revised pay scale. The employees who were working in the central workshop in various categories of the posts prior to 26th September 1976 were given workshop allowance. Under the settlement under which the pay scales were revised, it has been agreed upon to abolish the central workshop allowance, but a provision has been made that however, the existing incumbents who are getting allowance in central workshop, Baroda, the quantum of allowance being drawn shall be merged in the new pay scale. So, all the existing incumbents who were working in the central workshop and getting the workshop allowance on 1.4.75, have been given benefits as aforesaid. Some of the employees who were appointed by transfer or direct recruitment on promotion between 1.4.75 and 25.9.76, filed Special Civil Application No.561 of 1977 before this Court challenging the action of the respondent in not giving effect of merger of central workshop allowance in the revised pay scale to those class of persons. The grievance made by those class of persons found favour by this Court and this Court has decided that the cut off date which has been given for merger of central workshop allowance in the revised pay is artificial and has no nexus to the object sought to be achieved. A direction has been given that these benefits shall be given to all the employees in the central workshop as on 25th September 1976, and were getting workshop allowances. In the settlement dated 25th September 1976, the aforesaid benefits were restricted only to the technical staff of the central workshop, Baroda. The non technical staff who were working in the central workshop have agitated the matter

that though they were also getting workshop allowance, their allowance was not merged in the revised pay scale as it has been done in the case of technical staff, which results in hostile discrimination. The management and the Union have then reached another settlement dated 12th January 1980, under which it has been settled that the non technical staff who were in the Rolls of central workshop as on 22.11.79 will be allowed the benefit of merger of the amount equivalent to workshop allowance under the same principles as are envisaged in para-6 of the memorandum of settlement dated 25.9.76. In the settlement it has been specifically provided that no further entrants in the central workshop, Baroda will be entitled to the above mentioned benefits nor will this settlement cover any technical staff or non technical staff employed in the central workshop, Baroda, other than those on the Roll of the workshop as on 22.11.79. The petitioners have filed this writ petition for the extension of benefits to them on the ground that they were on the Roll of the workshop on 22nd November 1979, and as such, they were entitled for payment of workshop allowance and the merger of the same in their pay scale.

3. The respondents have filed reply to this Special Civil Application contesting the claim of the petitioners.

4. The learned counsel for the petitioners contended that it is a case of hostile discrimination amongst a class of persons. The benefit of settlement which has been given to the non technical staff of the workshop who were on Roll thereof on 22.11.79, but that benefit has not been given to the petitioners who were on the Roll of the workshop on 22.11.79. The respondents could not have made a discrimination amongst a class of persons. It has next been contended that the respondents have failed to give out any reason why the benefits have not been extended to the petitioners.

5. On the other hand, the learned counsel for the Commission contended that it is not a case of any discrimination whatsoever. The petitioners and the employees of non technical staff, working in the workshop and were on the Roll on 22.11.79 are two different class of persons. Shri Ajay Mehta, learned counsel for the respondents further contended that in the earlier settlement dated 25th September 1979, non technical staff working in central workshop were not given benefit of merger of allowance in the pay and these benefits were restricted to the technical staff, and as such, it was considered to be a case of discrimination and on demand

of Union, settlement has been arrived into between the parties on 12th January 1980 and the benefits of merger of central workshop allowance were also extended to the non technical staff. The benefits which have been extended to the non technical staff under the aforesaid agreement are for those persons who were there in the workshop earlier to 25th September 1976 and continued to be on the Roll of the workshop till 22.11.79. The petitioners were not there in the central workshop prior to 25th September 1976. These non technical staff was getting the central workshop allowance, but only because the benefits of the merger of allowance were restricted to the technical staff of the central workshop, they were not getting that benefit. The petitioners were appointed by transfer or direct recruitment in the central workshop after 25th September 1976, and as such, they were not given central workshop allowance also. In view of this facts, Shri Ajay Mehta submitted that this writ petition is wholly misconceived.

6. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

7. The learned counsel for the petitioner does not dispute that the benefit under the settlement dated 12th January 1980 was given to the non technical staff who was working in the central workshop earlier to 25th September 1976. She also admits that this benefit has been restricted to only those non technical staff of the central workshop who was there on the Roll on 22.11.79 and not to other persons. The non technical staff and the technical staff who was there in the central workshop before 25th September 1976 was getting workshop allowance. In the agreement dated 25th September 1976, a provision has been made that the central workshop allowance has to be abolished and it has to be merged in the revised pay of the employees, but that benefit of merger was restricted to the employees who were there on the Roll of the workshop on or before 1.4.75. For the technical staff who has come in the workshop after 1.4.75, the benefit of merger of central workshop allowance has not been extended under the settlement dated 25th September 1976. That class has approached this Court and this Court has considered it to be a case of discrimination. The cut off date for the benefit of merger of workshop allowance as fixed under the settlement dated 25th September 1976, was considered to be arbitrary and this Court has held that all the employees on the Roll of central workshop receiving allowances as on 25th September 1976, should be given the benefit of the merger of allowance in the revised pay.

The non technical staff who was there in the central workshop prior to 1.4.75 and till 25.9.76, were not given benefit of the merger of central workshop allowance though this staff was also receiving the workshop allowance. It was considered to be a discrimination. A demand has been made by the Union and taking it to be a case of discrimination in a class itself, a settlement has been arrived on 12th January 1980, under which the benefit of the merger of workshop allowance has also been extended to the non technical staff who was there in the workshop on 22.11.79. Reading of the agreement dated 12.1.80 gives out that non technical staff who was there on 22.11.79 was given the benefits of merger, but the inner fact has also to be taken into consideration. The provision is for the merger of workshop allowance. Under the settlement dated 12.1.80, the benefit of merger has been given to that class of employees which presupposes that those class of persons were receiving workshop allowance, which has not been disputed and which need not be gone into. But from the facts of the case, it is clear that the benefits were only given to the non technical staff who were there in the workshop on or before 25th September 1976 and were getting the workshop allowance. Further rider has been put that out of those class, protection has been given only to those workers of non technical staff who were on the Roll of workshop on 22.11.79. Plea of discrimination which has been raised by the petitioners it not tenable. The petitioners were appointed after 25th September 1976 in the workshop and they were not given the workshop allowance. From 25th September 1976, the workshop allowance was abolished and there is no question of giving them relief of workshop allowance. It is not a case where non technical staff of the central workshop on the Roll on 22.11.79 were ordered to be given central workshop allowance under the settlement dated 12.1.80. Under the settlement, it has been agreed upon that the class of persons who was receiving workshop allowance on or prior to 25th September 1976, their allowance will be merged in the revised pay.

8. Para-2 of the terms of settlement dated 12.1.80 clinches the issue. Clause-2 of the terms of settlement reads as under:

"2. The quantum of the amount equivalent to workshop allowance shall be calculated on the pay drawn by those non-technical staff as on 25.9.1976 and their pay will be notionally revised in the revised scale under the Memorandum of Settlement dated 25.9.1976, after taking into

account the above mentioned element of workshop allowance."

From reading of clause-2 of the terms of settlement dated 12.1.80, it is clear that the benefits have been given to only those class of non technical staff who were there in the workshop on or before 25th September 1976 and getting workshop allowance. In view of this fact, the plea of discrimination which has been raised by the petitioners is untenable. It is not a question of discrimination in the present case. The petitioners are the persons of different category than the persons to whom the benefits have been given for the merger of central workshop employees in the revised pay scale under the settlement dated 12.1.80 and as such, this writ petition is wholly misconceived.

9. In the result, this Special Civil Application fails and the same is dismissed. The petitioners are directed to pay Rs.100/- each by way of costs of this Special Civil Application to the respondents. The respondents are directed to recover the amount of costs of this petition from the salaries of the petitioners in monthly instalment of Rs.25/- each. Rule discharged.

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(sunil)